

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 JAMES S. LAKNER,

14 Plaintiff,

15 v.

16
17 LEWIS BALKE, et al.,

18 Defendants.
19
20

CASE NO: 08-CV-1791 W (CAB)

**ORDER DENYING EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

21 On October 1, 2008, Plaintiff James S. Lakner filed this civil rights lawsuit against
22 Defendants under 42 U.S.C. §1983. Along with the Complaint, Plaintiff filed a Motion
23 for Declaratory and Injunctive Relief and Temporary Restraining Order (the “Motion”).
24 It appears that the Motion was not served on Defendants, and accordingly Plaintiff
25 seeks an ex parte TRO. For the reasons set forth below, the Court **DENIES** the
26 Motion without prejudice.
27
28

1 **I. Factual Background.**

2 Plaintiff's residence was burned down in the October 2003 Cedar Fire. (*Mot.*,
3 p.1.) Twice in 2006 and four times in 2007, Plaintiff submitted plans to the County
4 Building Department to rebuild his home. (*Id.*, p.2.) Each time, the plans were rejected
5 because his property was "red flagged" by the zoning department. (*Id.*)

6 In 2006, the County Zoning Department cited Plaintiff for a solid waste
7 nuisance. (*Id.*) Plaintiff was able to defeat the citation at an administrative agency
8 appeal hearing, but Plaintiff was unable to get the red flag removed. (*Id.*)

9 Beginning in 2007, Plaintiff alleges that Defendants began a campaign to unjustly
10 issue citations to Plaintiff in order to justify an abatement action. (*Id.* pp.3–5; *Compl.*
11 pp.3–6.) These actions included Defendants' ordering SDG&E to disconnect electrical
12 services to Plaintiff's residence on June 4, 2008. (*Compl.* p.3.) As a result of losing
13 electrical services, Plaintiff alleges he is forced to use gasoline generators at a monthly
14 cost of approximately \$1100. (*Id.*)

15 Based on these actions, on October 1, 2008, Plaintiff filed this lawsuit alleging
16 that the Defendants violated a number of Plaintiff's civil rights, including property
17 rights, rights of accused, freedom from cruel and unusual punishment, freedom of
18 speech. (*Id.* p.3.) Plaintiff further alleges equal protection and due process violations.
19 (*Id.* pp.4–5.)

20 Along with the complaint, Plaintiff also filed the pending Motion seeking a TRO.
21 There is no indication that either the Motion or Complaint have been served on
22 Defendants.

23
24 **II. Discussion.**

25 The Federal Rules of Civil Procedure outline the procedures a federal court must
26 follow when deciding whether to grant a temporary restraining order. See Fed.R.Civ.P.
27 65. The standard for granting a temporary restraining order is the same for entering a
28 preliminary injunction. Bronco Wine Co. v. U.S. Dep't of Treasury, 997 F. Supp. 1309,

1 1313 (E.D. Cal. 1996); Franklin v. Scribner, Civil No. 07-0438 BTM (LSP), 2007 WL
 2 1491100, at *3 (S.D. Cal. May 21, 2007). The Ninth Circuit has prescribed the
 3 following equitable criteria for determining whether to grant injunctive relief:

4 (1) the likelihood of the moving party's success on the merits; (2) the
 5 possibility of irreparable injury to the moving party if relief is not granted;
 6 (3) the extent to which the balance of hardships favors the respective
 7 parties; and (4) in certain cases, whether the public interest will be
 8 advanced by granting the preliminary relief. The moving party must show
 9 either (1) a combination of probable success on the merits and the
 10 possibility of irreparable harm, or (2) the existence of serious questions
 going to the merits, the balance of hardships tipping sharply in its favor,
 and at least a fair chance of success on the merits... [T]he required degree
 of irreparable harm increases as the probability of success decreases.

11 Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co., 367 F.3d 1108, 1111
 12 (9th Cir. 2004) (quoting Miller ex. rel. N.L.R.B. v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456
 13 (9th Cir. 1994)). The temporary restraining order "should be restricted to serving [its]
 14 underlying purpose of preserving the status quo and preventing irreparable harm just so
 15 long as is necessary to hold a hearing, and no longer." Granny Goose Foods, Inc. v.
 16 Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439 (1974);
 17 accord L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1200
 18 (9th Cir. 1980); Del Toro-Chacon v. Chertoff, 431 F. Supp. 2d 1135, 1139-40 (W.D.
 19 Wash. 2006).

20 Here, Plaintiff has failed to satisfy any of the elements necessary to obtain an ex
 21 parte TRO. First, although being forced from one's home may constitute irreparable
 22 harm, there is simply no indication in the Motion or Complaint that Plaintiff's removal
 23 from his property is imminent. Accordingly, Plaintiff has failed to justify seeking a
 24 TRO, particularly on an ex parte basis.¹

25
 26
 27 ¹If Plaintiff wants to pursue a motion for a preliminary injunction, he must first serve
 28 Defendants with the summons, Complaint and preliminary injunction motion. Additionally, this
 Court's local rules require the Plaintiff to contact the Court's law clerk in order to obtain a hearing
 date for the preliminary injunction motion, before the motion is filed. (See Civ.L.R. 7.1(b).)

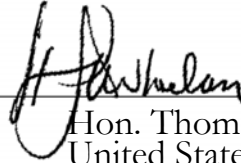
1 Second, Plaintiff has failed to establish a likelihood of prevailing on his claims.
2 In the Motion, Plaintiff simply alleges that "Defendant's have violated several of
3 Plaintiff's rights and he is confident that he will eventually prevail on the merits of this
4 case." (*Mot.* p.6.) This conclusory statement is insufficient. Rather, Plaintiff must
5 identify the legal standards for each claim included in his complaint and applying the
6 facts to law, demonstrate why he will prevail. Plaintiff has failed to do so.

7
8 **III. Conclusion & Order.**

9 Because Plaintiff has failed to establish imminent irreparable injury and a
10 likelihood of success on the merits, Plaintiff's ex parte Motion for a TRO is **DENIED**.

11 **IT IS SO ORDERED.**

12
13 DATED: October 2, 2008

14
15 
16 Hon. Thomas J. Whelan
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28